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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,813	02/03/2004	Jong Hyeok Lee	2950-0284P	9550
2292 7590 05/09/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER DINH, TAN X				
ART UNIT 2627		PAPER NUMBER		
NOTIFICATION DATE 05/09/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary**Application No.**

10/769,813

Applicant(s)

LEE, JONG HYEOK

Examiner

TAN X. DINH

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1) A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under Ex Parte Quayle, 25 USPQ 74, 453 O.G 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicants submission filed on 3/21/2008 has been entered.

2) The I.D.S filed 3/21/2008 has been considered by the Examiner. However, the Japan and/or foreign document(s), if they have not been written in English, are considered to the extent that could be understood from the English Abstract and the drawings.

Form PTO-1449 or PTO/SB/08 is(are) attached herein.

3) The indicated allowability of claims 1-11 are withdrawn in view of the newly discovered reference(s) to TAKEUCHI (6,879,555). Rejections based on the newly cited reference(s) follow.

4) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

5) (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an

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application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6) Claims 1,2,4,5,7,8,9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by TAKEUCHI (6,879,555).

TAKEUCHI discloses a method for determining the type of an optical disk loaded into an optical disk drive, as claimed in claims 1 and 5, comprising the step of:

(a) detecting a level of a wobble extraction signal while a focusing servo is turned on but before a focusing servo adjustment has been completed (Fig.6, Steps S601, S602 and S603);

(b) determining a type of a loaded optical disk based on the detected signal level (Fig.6, Steps S604, S605, S606, S607 and S608. In this case, the optical disc is determined as CD-R, CD-ROM or CD-RW based on detecting level of reflection);

c) performing a tracking servo adjustment operation according to the determined optical disk type (Fig.6, steps S609. See also column 8, lines 35-64).

As to claim 2, TAKEUCHI shows the level of the wobble extraction signal is detected while a tracking servo is turned off (Fig.6, tracking servo only turn ON at step S609. See column 8, lines 59-64).

As to claims 4 and 9, TAKEUCHI shows the step of adjustment operation in a recording mode when the determined optical disc is a recordable disc type (Fig.6, step S606 and S608. In this case, the optical disc is CD-R or CDRW).

Apparatus claim(s) 7 and 10 are drawn to the apparatus corresponding to the method of using same as claimed in claims 1 and 5. Therefore, apparatus claims 7 and 10 are rejected for the same reasons of anticipation (obviousness) as used above.

Claim 8 is rejected with the same reasons set forth in claim 2 above.

7) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8) Claims 3,6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over TAKEUCHI (6,879,555).

TAKEUCHI discloses all the subject matter as claimed in claim 3, *except to specifically show that* the detected level of the wobble extraction signal for a disk for recording is higher than that of a disk for reproducing. It would have been obvious to use a higher

detecting level of wobble extraction signal for recording disk than reproducing disk as claimed since the ATFM (Absolute Time Frequency Modulator) signal (wobble extraction signal) of recording disk is higher than reproducing disk.

As to claims 6 and 11, the method of using 3-beam or DPD scheme during recording or reproducing is old and widely used in the art.

9) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Applicant is reminded that in amending in response to a rejection of claims (if the rejection involves with any applicable arts), the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must also show how the amendments avoid such references and objections. See 37 CFR § 1.111(c).

Form PTO-892 is attached herein.

10) Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAN Xuan DINH whose telephone number is 571-272-7586. The examiner can normally be reached on MONDAY-FRIDAY from 8:30AM to 5:30PM.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the **Patent Application Information Retrieval (PAIR)** system. Status information for published applications may be obtained from either **Private PAIR** or **Public PAIR**. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

/TAN Xuan DINH/
Primary Examiner, Art Unit 2627
May 5, 2008